IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

Letters Patent Appeal No.317 of 2006
In
Writ Petition No.1407 of 1997

Office Notes, Office Memoranda of Coram, :
Appearances, Court's orders or directions :Court's or Judge's orders and Registrar's orders.

Mr. R.S. Parsodkar with Ms. P.D. Rane, Advocates for the appellants,

Mr. R.K. Deshpande, Advocate for R-2,

Mr. J.B. Jaiswal, AGP for R-1 & 3,

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CORAM : P. S. BRAHME & K. J. ROHEE, JJ.
DATED : NOVEMBER 17, 2006.

1. Heard Mr. R.S. Parsodkar, the learned counsel for the appellants, Mr. R.K. Deshpande, the learned counsel for respondent no.2 and Mr. J.B. Jaiswal, the learned Assistant Government Pleader for respondent nos.1 & 3.

2. By this Letters Patent Appeal the appellants are challenging the Judgment of the learned Single Judge in Writ Petition No.1407 of 1997 passed on 13.10.2006 whereunder the order passed by the School Tribunal has been maintained while dismissing the writ petition.

3. Admittedly Respondent No.2 was

appointed by the appellants initially by order dated 1.7.1990 for a period of 10 months from 1.7.1990 to 30.4.1991 and thereafter he was again appointed in the next Session by order dated 1.7.1991 for the period from 1.7.1991 to 30.4.1992. It is not disputed that for his appointment approval was given by Respondent No.3 – Deputy Director of Education, Nagpur Region, Nagpur. The controversy involved in that writ petition was whether the appointment of Respondent No.2 was temporary appointment/ time bound appointment or permanent appointment in adherence to the provisions contained in Section 5 of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977. The learned Member of the School Tribunal, accepting the contention of Respondent No.2, allowed the appeal and directed the Management/Appellants to reinstate him back in service with continuity and back wages. In the writ petition before the learned Single Judge the said decision of the School Tribunal was the subject matter of challenge. As stated earlier the learned Single Judge by his judgment dated 13.10.2006 upheld the decision of School Tribunal in appeal and consequently dismissed the petition.

4. It was urged by Mr. Parsodkar, the learned counsel for the appellants, that the learned Single Judge misinterpreted the law laid

down by the Apex Court in Hindustan Education Society's case and refused to follow the law laid down by the Apex Court by such wrong interpretation. It was further submitted by Mr. Parsodkar that the law laid down by the Supreme Court in Hindustan Education Society's case was followed by the Division Bench of this Court in Anna Pethe's case as well as by Single Judge in Writ Petition No.3488/1999. Mr. Parsodkar submitted that it was not permissible for the learned Single Judge to interpret the judgment of the Supreme Court by saying that certain facts were not brought to the notice of the Supreme Court. It was further urged that the learned Single Judge was wrong in observing that Hindustan Education Society's case cannot be construed to lay down a proposition which does not emerge from the reading of Section 5(1) and 5(2) of the MEPS Act or Rule 10 of the Rules thereunder.

5. Mr. Deshpande, the learned counsel for respondent no.2, on the other hand, pointed out that the learned Single Judge has not misinterpreted the Supreme Court's judgment but has distinguished it on facts. It was pointed out that in Hindustan Education Society's case the appointee was not qualified whereas in the present case the appointee was fully qualified to be appointed in the permanent vacancy. It was also pointed out by Mr. Deshpande that there is no

dispute that it was a permanent vacancy. It was further pointed out that the appointment orders nowhere mention that the post in which Respondent No.2 was appointed was reserved one.

6. We have gone through the judgment of the learned Single Judge as well as the judgment of the Apex Court on which reliance is placed by the learned counsel for the appellants. We find that the learned Single Judge has not misinterpreted the decision of the Apex Court in Hindustan Education Society's case, but has distinguished it on the basis of the pleadings of the appellants themselves and facts established in the writ petition. It may not be ignored that misinterpretation or wrong interpretation is one thing and distinguishing a judgment is another thing. Thus we find that the order of the learned Single Judge does not suffer from infirmity warranting interference by us in Letters Patent appellate jurisdiction. Letters Patent Appeal is accordingly dismissed in limine. Interim relief granted by order dated 13.11.2006 stands vacated.

JUDGE **JUDGE**

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